IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMARY SUIT NO.481 OF 2007

M/s. Veeraa Spinning Mills Pvt. Ltd. ..Plaintiff.

Vs.

M/s. Shreeji Textiles & Anr. ..Defendants.

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Mr. Sunil J. Kanojia with Ms. Neeta Solanki i/b Kiran Jain & Co. for the Plaintiff.

Mr. P.K. Das i/b M/s. R & D Legal for Defendant Nos.1 and 2.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

3rd December, 2007.

P.C. :

1. The claim in the suit is based on goods sold, supplied and delivered by the Plaintiff to the Defendants under two invoices dated 17th August, 2006 and 31st August, 2006 in the total amount of Rs.2,46,900/-. In response to the notice of demand dated 4th December, 2006, by a reply dated 13th December, 2006 the Defendants accepted that the goods were supplied and delivered, but claimed that there were defects in the goods supplied whereupon at a joint meeting the Plaintiff had agreed to reduce the price of the goods supplied to Rs.1,40,000/- against which the

payment was to be made by the Defendants after six months. The Plaintiff in its advocate' sletter dated 23rd December, 2006 denied that there was any such understanding and claimed that the Defendants had only been requested for time to pay in view of their financial difficulties.

2. At the stage of the Summons for Judgment an affidavit in reply was filed by the Defendants for seeking leave of the Court to defend the suit. This Court by its order dated 23rd April, 2007 held that the Plaintiff will be entitled to a decree on admission in the amount of Rs.1.40 lacs in view of the statement contained in paragraph 6 of the affidavit in reply read with the Defendants' letter dated 13th December, 2006, paragraph 3 of which expressly admitted a liability to the extent of Rs.1.40 lacs. Hence, the following order was passed :

> "i) There shall be a decree on admission in the amount of Rs.1.40 lacs;
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> ii) Leave to defend the Suit is granted to the Defendants in respect of the rest of the claim subject to the deposit of an amount of Rs.1,15,000/- within a period of six weeks from today. On deposit of the aforesaid amount, the Plaintiff would be at liberty to withdraw the same subject to furnishing security to the satisfaction of the

Prothonotary & Senior Master and filing an undertaking to bring back the amount in the Court, if so directed at such rate of interest as may be awarded by the Court;

iii) Written statement to be filed within a period of eight weeks of the date of the deposit."

The Summons for Judgment was accordingly disposed of.

3. A certificate of non-deposit dated 21st July, 007 has been issued by the Prothonotary and Senior Master. Counsel appearing for the Defendants does not dispute that no deposit has been effected conditional upon which leave to defend the suit was granted. In these circumstances, since the Defendants have failed to comply with the conditions subject to which leave to defend was granted to the extent of the claim of Rs.1.15 lacs, the suit shall have to be decreed in the amount of Rs.1,15,070/- (being the balance of the claim in the suit). The Plaintiff would also be entitled to interest on the entire amount of Rs.2,46,900/- as claimed in the suit at the rate of 12% per annum from the date of the suit until payment or realization.

Refund of Court fees, if any, as per rules.